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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JON PETER MONTONEN,

Defendant and Appellant.

A125257

(Del Norte County Super.
Ct. No. CR-F-08-9605)

THE COURT:

The petition for rehearing filed by appellant on October 13, 2010, is denied.

The opinion filed herein on October 5, 2010, is ordered modified as follows:

1. On page 1, amend (1) to read “the evidence is insufficient to support the verdicts on the transportation and possession counts.”
2. On page 5, amend the part II.A. heading to read “**Substantial Evidence Supports the Convictions for Transportation and Possession of Methamphetamine.**”
3. On page 7, amend the first sentence to read “Hence, the evidence here that defendant was found in possession of methamphetamine while he was a passenger in a moving car was sufficient to support his convictions of transporting and possessing methamphetamine.”
4. On pages 10-11, delete the carryover paragraph beginning “Penal Code section 4019 was amended,” and substitute the following: “Penal Code section 4019 was amended effective January 25, 2010, and provides that, except for crimes not involved here, ‘a term of four days will be deemed to have been served for every two days spent in

actual custody.’ (Pen. Code, § 4019, subd. (f); see *id.*, subds. (b) & (c); see also Stats. 2009, 3d Ex. Sess. 2009-2010, ch. 28, § 50.) The legislation addressed the state’s fiscal crisis by, among other things, awarding presentence conduct credits at a greater rate, thereby reducing jail populations. (See, e.g., Stats. 2009, 3d Ex. Sess. 2009-2010, ch. 28, §§ 41, 50.) There is a split of authority on whether the amendments to section 4019 are retroactive. (See, e.g., *People v. Pelayo* (2010) 184 Cal.App.4th 481, review granted July 21, 2010, S183552 (*Pelayo*) [amendments apply retroactively]; *People v. Hopkins* (2010) 184 Cal.App.4th 615, review granted July 28, 2010, S183724 (*Hopkins*) [amendments apply prospectively].) The issue is currently pending before our Supreme Court in numerous cases. (See, e.g., *People v. Bacon* (2010) 186 Cal.App.4th 333, review granted Oct. 13, 2010, S184782 [amendments retroactive]; *Pelayo, supra*, 184 Cal.App.4th 481 [same]; *People v. Norton* (2010) 184 Cal.App.4th 408, review granted Aug. 11, 2010, S183260 (*Norton*) [same]; *People v. Landon* (2010) 183 Cal.App.4th 1096, review granted June 23, 2010, S182808 (*Landon*) [same]; *People v. House* (2010) 183 Cal.App.4th 1049, review granted June 23, 2010, S182813 [same]; *People v. Brown* (2010) 182 Cal.App.4th 1354, review granted June 9, 2010, S181963 [same]; *Hopkins, supra*, 184 Cal.App.4th 615 [amendments prospective]; *People v. Otubuah* (2010) 184 Cal.App.4th 422, review granted July 21, 2010, S184314 [same]; and *People v. Rodriguez* (2010) 183 Cal.App.4th 1, review granted June 9, 2010, S181808 [same].)”

There is no change in the judgment.

DATED: _____ P. J.